

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 14, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2154-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2008CM89**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**AARON S. LOOS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Oconto County: MICHAEL T. JUDGE, Judge. *Reversed and cause remanded with directions.*

¶1 STARK, J.<sup>1</sup> Aaron Loos appeals a judgment of conviction for disorderly conduct with use of a dangerous weapon pursuant to WIS. STAT.

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

§§ 947.01 and 939.63(1)(a), and an order denying his motion for postconviction relief. He argues the circuit court erred by imposing a two-year period of probation when the maximum allowed by statute was a one-year probationary term. He also asks us to vacate the sentence he received after his probation was revoked because he contends the Department of Corrections did not commence revocation proceedings until after the expiration of the permissible one-year probationary term.

¶2 We conclude Loos's two-year probationary term exceeds the maximum allowed by statute and Loos's term of probation had expired before the Department of Corrections commenced revocation proceedings. Accordingly, we reverse and remand with directions to modify the judgment of conviction to reflect a one-year probationary term and to vacate the court's sentence after revocation.

### **BACKGROUND**

¶3 The State charged Loos with disorderly conduct with use of a dangerous weapon after he struck an individual with a beer bottle during an altercation. As part of a global plea resolution, Loos pled no contest to the disorderly conduct charge and a burglary charge in an unrelated case. The court found Loos guilty. On March 16, 2011, the court withheld sentence on the misdemeanor disorderly conduct conviction and placed Loos on probation for three years with various conditions.<sup>2</sup> That probationary period was subsequently reduced to two years.

---

<sup>2</sup> On the felony burglary conviction, the court imposed and stayed a prison sentence and placed Loos on probation for three years.

¶4 Loos moved for postconviction relief, arguing in part that the court erred by imposing a two-year term of probation on the misdemeanor disorderly conduct conviction. He asserted the maximum length of the probationary term could not exceed one year.

¶5 In May 2012, while Loos's postconviction motion was pending, the Department of Corrections commenced revocation proceedings for an incident that occurred on April 12, 2012. Loos's probation was ultimately revoked, and he returned to the circuit court for sentencing on the misdemeanor conviction.

¶6 On September 7, 2012, the court held a combined postconviction and sentencing after revocation hearing. Loos argued the court exceeded its authority by imposing a two-year period of probation. He also argued that, because the court was only permitted to impose one year of probation, his term of probation on the misdemeanor conviction had expired before the Department of Corrections commenced revocation proceedings. As a result, Loos asserted the court could not impose a sentence on the misdemeanor conviction.

¶7 The circuit court denied Loos's postconviction motion. It ultimately sentenced him to six months' jail on the disorderly conduct conviction.

## DISCUSSION

¶8 On appeal, Loos argues that, pursuant to WIS. STAT. § 973.09(2)(a)1r.,<sup>3</sup> the maximum length of his probationary term on the misdemeanor conviction could not exceed one year. He also contends he could

---

<sup>3</sup> WISCONSIN STAT. § 973.09(2)(a)1r. provides the original term of probation shall be "[e]xcept as provided in subd. 2. [relating to the probationary term following multiple misdemeanor convictions], ... not more than one year."

not be sentenced after his probation was revoked because the term of his misdemeanor probation expired in March 2012 and the Department of Corrections did not commence revocation proceedings until May 2012.

¶9 The State agrees that, pursuant to WIS. STAT. § 973.09(2)(a)1r., Loos could receive only one year of probation on the misdemeanor conviction. It argues, however, the court was permitted to increase the maximum length of Loos's probationary term by one year based on the court's application of § 973.09(2)(b)2. That subdivision provides: "If the probationer is convicted of 2 or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction." The State asserts that, because Loos was convicted of one misdemeanor and one felony at the same time, the circuit court properly increased the maximum term of probation on the misdemeanor conviction by one year.

¶10 The State's argument regarding the application of WIS. STAT. § 973.09(2)(b)2. to the term of probation on Loos's misdemeanor conviction is foreclosed by *State v. Reagles*, 177 Wis. 2d 168, 501 N.W.2d 861 (1993). In that case, the defendant was convicted of one misdemeanor and three felonies at the same time. *Id.* at 171. Based on the multiple convictions, the circuit court relied on § 973.09(2)(b)2. to increase the amount of probation it could otherwise impose on the misdemeanor conviction. *Id.* at 174. On appeal, the defendant objected to the extended term of probation. *Id.* at 171. He argued § 973.09(2)(b)2. could be applied only to increase the maximum term of probation on a *felony* conviction and the circuit court erred by applying § 973.09(2)(b)2. to increase the term of probation on his *misdemeanor* conviction. *Id.* at 174.

¶11 The *Reagles* court agreed. It first determined the plain language of WIS. STAT. § 973.09(2) distinguished between the length of probationary terms for misdemeanor and felony convictions. *Id.* at 174-75. Specifically, it noted that § 973.09(2)(a) applied only when imposing a probationary term on a misdemeanor conviction and § 973.09(2)(b) applied only when imposing a probationary term on a felony conviction. *Id.* The court reasoned that, because § 973.09(2)(b)2. fell within the purview of § 973.09(2)(b), subdivision (2)(b)2. could be applied only to increase the length of probation for felony convictions. *Id.* It concluded the circuit court erred by relying on § 973.09(2)(b)2. to increase the length of probation for a misdemeanor conviction. *Id.* The court then reversed and remanded with directions to reduce the length of the defendant's term of probation on his misdemeanor conviction. *Id.* at 175-76.

¶12 Based on *Reagles*, we conclude WIS. STAT. § 973.09(2)(b)2. cannot be used to increase the length of Loos's probationary term on his misdemeanor conviction.<sup>4</sup> See *Reagles*, 177 Wis. 2d at 175-76. Because § 973.09(2)(b)2. cannot be used to increase the length of Loos's probation, the court's two-year probationary term on the misdemeanor conviction exceeded the one-year maximum term allowed by § 973.09(2)(a)1r. We therefore reverse and remand to the circuit court with directions to reduce the probationary term on the misdemeanor conviction to one year.

¶13 Loos next argues that, if we determine the maximum term of probation was one year, we must also vacate the sentence he received after his probation was revoked. He contends the court was without authority to sentence

---

<sup>4</sup> The circuit court could have used WIS. STAT. § 973.09(2)(b)2. only to increase the length of probation on Loos's felony burglary conviction.

him because he completed his one-year probationary term before the Department of Corrections commenced revocation proceedings. The State does not respond to this argument, and we deem it conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). In any event, Loos's probation on the misdemeanor conviction expired in March 2012, and the record shows the Department of Corrections did not begin revocation proceedings until May 2012. We therefore direct the circuit court on remand to also vacate the six-month jail sentence Loos received on the misdemeanor conviction after his probation was revoked.

*By the Court.*—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

